

**POPULAR PARTICIPATION FOR DISEMPOWERMENT? DEMOCRATIC
CONSTITUTION MAKING IN THE CONTEXT OF AFRICAN LIBERAL
DEMOCRACY**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF
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DECLARATION

I **ZELEZECK NGUIMATSA SERGE** declare that this dissertation **Popular participation for disempowerment? Democratic constitution making in the context of African liberal democracy** is my work and has not been submitted before for any degree or examination in any other university. All sources used are dully acknowledged.

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DEDICATION

There is hardly any emancipatory potential in all current mainstream ‘solutions’ to Africa’s predicaments. As such real solutions must reside in some unexplored alternatives. To the many on the continent and in the Diaspora who continue to look for these alternatives, this dissertation is dedicated.

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LIST OF ABBREVIATIONS

ANC	African National Congress
CDD	Centre for Democracy and Development
CFCR	Citizens Forum for Constitutional Reform (Nigeria)
CODESA	Convention for a Democratic South Africa
CODESRIA	Council for the Development of Social Science Research in Africa
EU	European Union
HURILAWS	Human Rights Law Service (Nigeria)
ICCPR	International Covenant on Civil and Political Rights
IMF	International Monetary Bank
NRM	National Resistance Movement (Uganda)
UN	United Nations
UNHRC	United Nations Human Rights Committee
USIP	United States Institute for Peace

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CHAPTER 1: INTRODUCTION

1.1 Background of the study

Until the 1990s, emphasis in constitutional studies was almost exclusively focused on substantive provisions of constitutions with no or limited scrutiny of processes.¹ This narrow focus was drastically challenged with the Third wave of democratisation. Today, the process by which constitutions are made is considered just as worthy a subject of investigation as the content of constitutions. This emphasis on process has been described by some commentators as the 'new-constitutionalism.'² New-constitutionalism is viewed as been coterminous with democratic constitution-making and basically focuses on what Kaime describes as 'legitimacy-led issues.'³ As Ihonvbere states, constitution-making processes are today viewed as 'critical to the strength, acceptability, and legitimacy of the final product.'⁴

At the core of the idea of democratic constitution-making, is therefore the concept of popular participation. There is even growing recognition in International human rights law of a right to participate in constitution-making.⁵ The involvement of the people in the constitution-making process is believed not only to bestow legitimacy but also guarantee the people's sense of ownership of the constitution and therefore their ability and willingness to defend it.⁶ It is believed that by owning and understanding their governance system, the people would naturally play the role of ultimate guardians of the democratic dispensation which mere institutional safeguards alone cannot do.⁷

¹ Thorough scholarly investigations of the constitution-making process is a post mid 1990s development which sought to take stock of, as well as guide the new wave of constitution-making ushered in by the Third Wave of democratisation. See page below.

² See J Ihonvbere *Towards the new constitutionalism in Africa* CDD Occasional Paper Series (2000) 4 available at http://www.kituoachakatiba.co.ug/Nigeria_CDD_paper.html (accessed on 15 October 2008); V Hart 'Democratic constitution making' USIP, Special report 107 (2003) 3. available at <http://www.usip.org/pubs/specialreports/sr107.html> (accessed on 24 June 2008); and S Brooke 'Constitution-making and immutable principles' unpublished Masters thesis, Tufts University, 2005 7-8.

³ T Kaime 'Book review of Comparative Constitutionalism and Good Governance in the Commonwealth: an Eastern African perspective' (2006) 50 (1) *Journal of African Law* 86.

⁴ Ihonvbere (n 2 above) 44.

⁵ In *Communication, Marshall v Canada*, UNHR Committee (3 December 1991), UN Doc CCPR/C/43/D/205 (1984) as well as in General Comment 25, the UNHRC has recognised the right to participate in constitution-making as a subset of the general right to participation in public affairs enshrined in article 25 of the ICCPR. See generally Hart (n 2 above) 5.

⁶ Ihonvbere (n 2 above) 15; Hart (n 2 above) 1-3.

⁷ Hatchard, Ndulo and Slinn emphasise the fact that parliamentarians have had no track record of protecting constitutions in Africa and thus the 'guardians of the constitution' must be the people themselves: J Hatchard et al *Comparative Constitutionalism and Good Governance in the Commonwealth: an Eastern African perspective* (2004) 55-56. Similarly, in pondering on the 'forces that constraint politicians' behaviour' in new democracies, Manning refers to the limits of mere institutional checks and balances: C Manning 'Political elites and democratic state-building efforts in Bosnia and Iraq' (2006) 13 (5) *Democratization* 733.

The relevance of this new-constitutionalism is particularly accurate in the African context. Africa has produced most of the best practices in this area and arguably has the largest number of countries still badly in need of utilising it.⁸ It is instructive that in a recent study entitled *Reconstructing the state in Africa*, the first recommendation put forward was 'the reconstruction of the African state through a new constitutional compact'⁹ which must be 'process-led':

That is, the drafting of the constitution must involve the participation of all citizens in the polity, not just the members of the political class or the literate few. Specifically, the drafting of the constitution must be based on extensive consultations, discussions, and debates at various level of society. The ostensible purpose is to help ensure that the views of all of the stakeholders are heard and taken into account. An open, inclusive, and consultative constitutional process helps to cement the idea that the constitution belongs to every citizen and the wealthy or the articulate few.¹⁰

The enthusiasm and faith which is manifested in the literature in favour of popular participation in constitution-making in the African context is astonishing. While some see this as 'key to addressing ethnic contradictions and their underlining social problems'¹¹, others see it as the foster parent of good governance, peace and development.¹² Ihonvbere for his part sees it as critical to resolving burning national issues and as:

...one of the best panaceas to instability, public cynicism, alienation from government, coups and counter-coups. It is equally the best way to cultivate a culture and tradition of reliance on dialogue and consensus rather than the resort to violence in the political process.¹³

The question is therefore why democratic constitution making has acquired such a status of panacea to Africa countries' predicaments. The reason is largely to be found in the fact that most of the problems of the three decades immediately following independence were blamed on the lack of a national consensus as to how the state was to be organised and managed.¹⁴ The fact that independence constitutions were directly handed down by the colonial masters and invariably followed the Westminster or the Gaullist's model is well known.¹⁵ As it has been noted:

⁸ Invariably countries such as Uganda, Eritrea, South Africa, Ghana, Rwanda etc are cited by commentators, African and non-African alike, as best practices of constitution making .

⁹ PO Agbese & GK Kieh 'Democratizing states and state reconstruction in Africa' in PO Agbese & GK Kieh (eds) *Reconstructing the state in Africa* (2007) 18.

¹⁰ PO Agbese & GK Kieh 'State renewal in Africa: the lessons' in Agbese & Kieh (n 5 above) 282.

¹¹ Agbese & Kieh (n 9 above) 19.

¹² Hartchard et al (n 7 above).

¹³ Ihonvbere (n 2 above) 26.

¹⁴ This reasoning was at the heart of the Ugandan process of constitution making which started in 1989 and culminated in 1995 as well as of the many National Conferences in the 1990s.

¹⁵ See for a succinct comment J Elster 'Forces and mechanisms in the constitution-making process' (1995-1996) 45 *Duke Law Journal* 369.

A common criticism of the independence Constitutions were that they were “imposed” from outside and were therefore lacking in local roots or popular legitimacy. The one-party Constitutions contained merely such adaptations as were necessary to entrench the new dispensation.¹⁶

The vast majority of Africans therefore had no understanding of or attachment to these independence constitutions and subsequent second generation constitutions¹⁷ since both were impositions that hardly sought popular consent. The ease with which the political class and military leaders were able to trample upon, change or suspend constitutions has largely been blamed on the lukewarm attitude of ordinary people vis-à-vis these documents. Nwabueze emphasises this fact when he states that:

It cannot be disputed that a major cause of the collapse of constitutional government in many of the new states was the lack of respect for the constitution among the populace....¹⁸

Thus third generation constitutions primarily aimed at addressing this lack of respect and legitimacy by ushering in an era in which the totality of the population had a real stake in their constitution.

1.2 Problem statement

As is usually said, democracy means different things to different people. Perhaps a clear illustration of this is the fact during the drafting of the African Charter on Democracy, Elections and Governance, approximately 18 contradictory definitions of democracy were advanced and experts could not agree on any and had to use the term undefined.¹⁹ As Welzel and Inglehart note:

There is tension between two different conceptions of democracy. The narrow concept hinges on suffrage and considers any regime that holds competitive, free, fair and regular elections to be a democracy. In this scenario, elite agreement is key and mass preferences matter little. Advocates of this position argue that certain requisites of democracy such as social mobilization are unimportant. This construct is often labelled “electoral democracy.”

¹⁶ Hartchard et al (n 7 above) 313.

¹⁷ The term ‘second generation constitution’ is used in the literature to refer to the post-independence constitutions which introduced the single party system as opposed to ‘first generation’ which are independence constitutions and third generation which are the democratisation constitutions of the 1990s and beyond.

¹⁸ BO Nwabueze *Ideas and facts in constitution making* (1993) 20.

¹⁹ Personal interview with Prof. Michelo Hansungule (April 2008), one of the drafters of the African Charter on Democracy, Elections and Governance.

Critics of this view charge that it accepts even the most elite-manipulated societies as democratic as long as they hold competitive elections, and ignores the principle that genuine democracy is government by the people in which mass preferences shape public policy.²⁰

It has been widely demonstrated that the narrow model of democracy which Welzel and Inglehart describe is the form of democracy which has prevailed in Africa since the 1990s.²¹ Ake demonstrated how this form of democracy disempowers ordinary citizens on the continent:

Africa is democratizing but the democratization occurring in Africa does not appear to be in the least emancipatory. On the contrary, it is legitimising the disempowerment of ordinary people who seem to be worse off than they used to be because their political oppression is no longer perceived as a problem inviting solution, but a solution endowed with moral and political legitimacy.²²

The problem therefore is that democratic constitution making emerged and has been conducted in a context where the narrow conception of democracy describes above has attained hegemonic proportions on the continent. The constitution-making process has consequently not sought to challenge this limiting form of democracy but has systematically been confined to 'legitimising' it. Hence democratic constitution making in Africa seems, where it actually succeeded, to have created only a consensus among the political elite and to have left the vast majority of the population largely in their ignorance and disempowerment thereby defeating the very purpose for which popular participation was advocated in the first place. Clearly the rightfulness of popular participation in constitution-making itself is not to be doubted. This study argues that the problem resides in the hegemony of a narrow conception of democracy which democratic constitution making has systematically been corned to endorse.

1.3 Research question

In the light of the above, this study is concerned with one overarching question, namely how can popular participation in constitution making usher in the beginning of the end of the marginalisation and disempowerment of the majority of African citizens?

1.4 Objectives of the study

²⁰ C Welzel & R Inglehart 'The role of ordinary people in democratisation' (2008) 19 (3) *Journal of democracy* 126.

²¹ See generally T Lumumba-Kasongo (ed) *Liberal Democracies and its critics in Africa: political dysfunction and the struggle for social progress* (2005).

²² C Ake *Democratization of disempowerment in Africa* (1994) 1.

In view of providing a sound answer to the research question above, it is thought wise first to demonstrate the nature and reality of the of the marginalisation and disempowerment of ordinary citizens we talk about. Such is indispensable to put our analysis in focus. Secondly, the study shall highlight how democratic constitution making as conducted so far on the continent has left unchallenged this marginalisation and disempowerment. Lastly possible solutions shall be advanced.

1.5 Conceptual clarification

In this work, we use the term 'democratic constitution making' to means the inclusive process which has been described above. That is, the direct involvement of the totality of the citizenry in the process of adoption of their constitution. The term does not therefore refer to any substantive form of democracy but simply to the *process*.

Another term we use is 'liberal democracy'. We use this term as understood within the historical context and evolution which we describes in chapter two. Central to this understanding is the differentiation between democracy *tout court* and liberal democracy. The conflict at the centre of this differentiation is outlined in the following quote from Ake:

...the dominant paradigm of democratisation is neither interested in what we are nor in the historicity of what it wants us to become. It confuses democracy with liberal democracy and fails to distinguish the values and principles of democracy which are arguably universal from the institutional forms and processes of western democratic practice which are decidedly historically specific.²³

1.6 Significance of the study

As we are writing now, the vast majority of African states are directly confronted with the prospects of adopting a new constitution; the current one being largely denounced as illegitimate. Even in the few countries in which the constitution is ostensibly viewed as legitimate, we have argued that this 'legitimacy' has not transcended the political elite. Most countries on the continent therefore continue to be extremely fragile given that the guardianship/watchdog role which is normally to be played by the majority of citizens in favour of democratic dispensation has not yet been secured. And the state continued to be significantly unresponsive to the concerns of the majority.

Hence it is not rocket science to understand that any army commander or acute politician can easily overthrow or subvert the constitutional order; there being no guarantee that the people would stand up against it. The recent military coup in Mauritania just in the aftermath

²³ C Ake *Is Africa democratizing?* (1996) 23.

of a major re-democratisation process is an illustration of this threat. The current elite struggle within the ANC in South Africa with its clearly observable potential to successfully play popular support against constitutional order is another illustration. Museveni is said to have perverted and personalised power in Uganda;²⁴ but why did the millions of Ugandans who allegedly all reached a democratic consensus through the constitution making process between 1989 and 1995 not react energetically. If Mwenda's analysis is anything to go by, why have Ugandan rural dwellers who represent some 88% of the population exhibited the typical reaction of disempowered Africans.²⁵ Why 'instead of confronting the burdensome state, they have simply done their best to avoid it'²⁶?

The above examples illustrate how precarious elite orchestrated democracies are; for '[e]lites almost always prefer to retain as much power as possible.'²⁷ Welzel and Inglehart assert that:

In response to survey questions about whether democracy is desirable, strong majorities endorse democracy, even in countries where self-expression values are weak – but in such cases, both the priority placed on self-expression and propensity to engage in political action are relatively weak, leaving the elites safe to ignore mass preferences. This does not necessarily prevent elites from adopting democratic institutions; pressures from external actors might prompt them to do so. But if elites are not under strong domestic pressure to make these institutions effective, they are likely to corrupt them, rendering democracy ineffective.²⁸

It is easily understandable that as long as the large majority of the population in our countries continues to be left on the road, no genuine democratisation can be talked about. Democratic constitution making has the potential of durably empowering ordinary citizens but as has been highlighted above, this potential has frequently been brought to nought. The significance of this study thus resides in the need to tackle arguably one of the most puzzling impediments to genuine democratisation on the continent.

1.7 Literature survey

This study hinges on both literature on constitution making and literature on the nature of the African state as well as the unique form of democracy which the third wave introduced on the continent. We deal here with both sets of literature seriatim.

²⁴ AM Mwenda 'Personalising power in Uganda' (2007) *Journal of democracy* 18 (3) 23-37.

²⁵ Mwenda (n 24 above) 34. Ihonvbere describes this typical reaction as one of avoidance of the state rather than confronting it when it is oppressive. See JO Ihonvbere 'Where is the third wave? A critical evaluation of Africa's non-transition to democracy' in JM Mbaku & JO Ihonvbere (eds) *Multiparty democracy and political change: Constraints to democratisation in Africa* (1998) 11-12.

²⁶ Mwenda (n 24 above) 34.

²⁷ n 20 above, 134.

²⁸ n 20 above 130.

Since the 1990s, a growing number of works dealing specifically with constitution-making has been produced. One first such work is Nwabueze's *Ideas and facts in constitution making*.²⁹

Two other earlier works are Elsen's,³⁰ and Arato's.³¹ Both works basically deal with the two dominant traditions of constitution-making in the West namely the American and the French models. They do not specifically deal with the issue of popular participation. In fact, they can be considered to be representative of the 'first generation' works on constitution-making that only sought to revisit western models at the wake of the new wave of constitution-making in the 1990s. These were followed by 'second generation' works which, taking stock of the political developments that have taken place meantime, particular in Africa, began to focus specifically on popular participation.

The first of this category is Ihonvbere's *Towards a new constitutionalism in Africa*.³² By reviewing the recent history of despotism on the continent epitomised by the Big men syndrome and by analysing the constitution making experience of Uganda, South Africa, Eritrea, Ghana, and Ethiopia which he contrasts with the Nigerian situation, Ihonvbere exposes 'the limited value of imposed or government promulgated, top-down constitutions and make[s] a case for what one might call process-led or bottom-up constitutionalism.'³³ Ihonvbere's main merit resides in his attempt to provide 'systematic articulation of mechanisms and principles' that must guide democratic constitution making.

Another oft-cited work still in the latter category is Hart's 'Democratic constitution-making'³⁴. Hart demonstrates how popular participation has become part of recent constitution-making by reviewing the experience of countries such as South Africa, Eritrea, Rwanda and Kenya. She argues that this is a radical departure from the traditional western model and is gradually becoming a recognised human right.³⁵ In the same vein, Hatchard, Ndolu and Slinn review constitution-making and constitutional amendment in the Commonwealth countries of eastern and southern Africa, and while commending the South African and Namibian process, point to the shortcomings of the Zimbabwean and Zambian processes.³⁶

In addition to the above, several countries specific works have been produced. These include Odoki's works on Uganda,³⁷ Ebrahim's³⁸ and Andrews and Ellmann's³⁹ works on South Africa

²⁹ n 18 above.

³⁰ n 15 above, 364.

³¹ A Arato 'Forms of constitution making and theories of democracy' (1995- 1996) 17 *Cardozo Law Review* 191.

³² n 2 above 12.

³³ n 2 above .

³⁴ n 2 above.

³⁵ n 5 above.

³⁶ n 7 above, 35- 42.

³⁷ BJ Odoki *The search for a national consensus: the making of the 1995 Uganda Constitution* (1998).

³⁸ H Ebrahim *The soul of a nation: constitution-making in South Africa* (1998).

³⁹ P Andrews & S Ellmann *The post-Apartheid constitutions: Perspectives on South Africa's Basic Law* (2001).

constitution making as well as the direct report of national bodies that were involved in constitution-making processes.⁴⁰ There are also advocacy papers produced by NGOs or individuals in order to sell the idea that a current national constitution is illegitimate and therefore a new one must be adopted in a participatory manner.⁴¹ Specific recent political events have also generated a substantial literature on participatory constitution-making. This is the case with Fossum and Menendez,⁴² Wiener and Sala,⁴³ and Lombardo⁴⁴ whose works reflect on the need for European people to be involved in making the EU constitution. Similarly a good amount of work in this area has also been produced by USIP perhaps as the result of a need to rebuild democracy after the American invasion of Iraq.⁴⁵ The main thrust of all the above works is basically about establishing how firmly entrenched, popular participation has become constitution-making.

Having said the above, it is important to note that the issue of popular participation has been present in the literature on the predicaments of the post-colonial African state since virtually the end of the independence euphoria. The exploitative, extractive, unproductive and authoritarian nature of the African state perpetuated as a result of the refusal of the African elite to alter the colonially inherited state is well documented. The dichotomy elite/masses which is at the heart of the marginalisation and disempowerment of ordinary Africans has been cited and explained by authors such as Fanon,⁴⁶ Davidson,⁴⁷ Ake,⁴⁸ Nzongola-Ntalaja,⁴⁹ and Ihonvbere and Mbaku,⁵⁰ and Lumumba-Kasongo,⁵¹ to list only those few. Alongside Ake, several authors have demonstrated how the third wave of democratisation has perpetuated and even furthered the marginalisation and disempowerment of the majority on the continent.⁵² Typically, the above authors have proposed popular participation as the solution to the marginalisation and disempowerment of ordinary citizens. The uniqueness of

⁴⁰ Such reports include Uganda Constitutional Commission's *Guidelines on Constitutional Issues*: 1991; as well as those of countries such as Rwanda, Kenya etc...

⁴¹ Examples are: HURILAWS' *Towards a peoples' constitution in Nigeria: a civic educational manual for the legal community* (2002); CFCR's 'Governance and constitution reform in the fourth republic: The Nigerian experience' ; O Igbuzor 'Constitution making in Nigeria: lessons for making a people's constitution' (2001) available at <http://www.cdd.org.uk/cfcr/constitutionlessons.htm>.

⁴² JE Fossum & AJ Menendez 'The constitution's gift? A deliberative democratic analysis of constitution making in the European Union' in *European Law Journal* (2005) 11(4) 380.

⁴³ A Wiener & VD Sala 'Constitution-making and citizenship practice –bridging the democracy gap in the EU' (1997) 35 (4) *Journal of Common Market Studies* 596.

⁴⁴ E Lombardo 'Integrating or setting the agenda? Gender mainstreaming in the European constitution making process' (2005) *Social Politics* 12(3) 412 .

⁴⁵ USIP 'Iraq's constitutional process: Shaping a vision for the country's future' (2005) Special report 132. available at <http://www.usip.org/pubs/specialreports/sr132.pdf>

⁴⁶ F Fanon *The wretched of the Earth* (1961).

⁴⁷ B Davidson *The black man's burden: Africa and the curse of the nation-state* (1992).

⁴⁸ n 22 above; also n 23 above

⁴⁹ G Nzongola-Ntalaja 'Democratic transitions in Africa' (1995) 9 *Newsletter of African Association of political science*.

⁵⁰ n 25 above.

⁵¹ n 21 above.

⁵² Most recent include AK Onoma 'the language question: an anti-essentialist excavation' Paper presented at the 11th General Assembly of CODESRIA (2005) available at http://www.codesria.org/Links/conferences/general_assembly11/papers/onoma.pdf (accessed on 25 October 2008); GR Murunga 'A note on the knowledge question in Africa's development' (2005) (3&4) *CODESRIA Bulletin* 8.

this study resides in the fact that it demonstrates that popular participation in constitution making while being potentially empowering can nevertheless be constrained into perpetuating and legitimising ordinary citizens' disempowerment.

1.8 Methodology

The main research methodology is literature review including primary and secondary sources. Empirical studies conducted by other authors and institutions in various African countries are analysed. The research is approached from a multidisciplinary perspective given the complex nature of the question investigated.

1.9 Limitation of study

Ideally a study of this nature requires survey of citizens in various African countries in order to gather information on their perception of the quality of their participation, if any, in setting what Said describes as “the narathemes that structure, package and control discussion” on and about society on the continent.⁵³ We neither had the resources nor the time necessary to conduct such comprehensive surveys. Hence we used the few empirical studies which have been conducted by others to make our point despite the fact that most of them have as starting point the narrow model of liberal democracy.

1.10 Overview of chapters

Chapter one provides an introduction of the research study and its objectives. Chapter two focuses on the nature and reality of the marginalisation and disempowerment of ordinary citizens in African polities. Chapter three discusses democratic constitution-making in the context of the disempowering liberal democracy. This chapter thus explores the question why does democratic constitution making leave unchallenged the marginalisation and disempowerment of ordinary citizens. Lastly, Chapter four looks at what can be done to solve this problem in the form of conclusion and recommendations.

⁵³ E Said 'The other America' (2003) 630 Al-Ahram Weekly 5 cited by Onoma (n 53 above) 7.

CHAPTER 2: MARGINALISATION AND DISEMPOWERMENT OF ORDINARY CITIZENS

2.1 Introduction

This Chapter analyses the marginalisation and disempowerment of ordinary citizens within African polities. The Chapter thus first recalls the historical nature of this marginalisation and disempowerment, which it takes a great deal of time and space to elaborate; for without this historical base, the subsequent developments would not be understood. Secondly it looks at how African popular struggles including the struggle for democracy have systematically been perverted thus perpetuating this marginalisation and disempowerment. Lastly it looks at the hegemony of the minimalist liberal model of democracy on the continent.

2.2 Historical nature of the marginalisation and disempowerment

2.2.1 Elite masses dichotomy

The historical marginalisation and disempowerment of ordinary citizens (the masses) in African states deriving from the sharp dichotomy elites masses, which colonialism introduced in African societies, is one of the most constant themes in the literature on the predicaments of Africa.⁵⁴ Fanon as far back as 1961 demonstrated the comprador nature of the African elite whose training predestined to be nothing more than agents or facilitators for the very forces that exploited the continent.⁵⁵ In fact, colonial education and missionary evangelisation primarily aimed at brainwashing and alienating Africans vis-à-vis their own society and people thus transforming them into subservient auxiliaries of colonialism. As Davidson so emphatically noted:

Above the entrance to every [colonial] school there was an invisible but always insistent directive to those who passed within the magic gate to the “white man’s world”: ABANDON AFRICA, ALL YE WHO ENTER HERE.⁵⁶

The colonial society conditioned the social elevation of Africans to a total rejection of their Africaness and largely succeeded in this enterprise; hence the cultural alienation of most of those Africans who emerged above ordinary folks during the colonial period.⁵⁷ It was these

⁵⁴ For a general discussion of the African elite, see S Randrianja ‘*L’élite africaine au pouvoir: identité, domination et accumulation*’ (2003) CODESRIA Report of *Institut sur la gouvernance*. For analysis of elite masses dichotomy see Davidson (n 47 above) 34-36; FK Ewane *Defi aux Africains du IIIe millenaire* (2000) 102-103.

⁵⁵ See generally chapter 6 of Fanon (n 46 above).

⁵⁶ n 47 above, 42.

⁵⁷ Colonial social institutions such as *évolué* versus *indigène* or *assimilado* versus *indigène*, meant that to enter the close category of ‘emancipated’ (which invariably meant ‘emancipation’ vis-à-vis the African society and

colonially 'emancipated' Africans who eventually became the cadres of nationalist movements at a time when 70 years or so of colonialism had already rooted in their psyche the notion of supremacy or universality of European ideas and the consequential backwardness and primitiveness of all things African. This heritage loomed large in the way the nationalist struggle was structured and accounted for the perversion of that struggle as we see further below.

2.2.2 Persistent tradition of elite contempt for the masses

The direct consequence of the African elites' colonially-developed preference for western preconceived ideas has always been the shunting of any real local conversation between elites and ordinary citizens whom the former regard with 'suspicion and fear'⁵⁸ or, in any case, as backward and ignorant. Examples of this behaviour even today, in the 21st century, are numerous and easily observable in African societies. One striking example concerns the behaviour of some African delegations before the United Nations Committee on the Rights of the Child narrated by Harris-Short:

Many of the traditions in question touch upon values and beliefs at the heart of family and community life. Yet, despite the centrality of these traditions to the cultural life of the local populace, state delegates often make no attempt to defend them against criticism from the Committee. In fact, many of the delegates adopt a positively hostile attitude towards the culture and traditions of their own people. The delegation from the Central African Republic, for example, accuse the local population of "social and cultural backwardness." The reason for such criticism lies in the apparent belief that culturally entrenched attitudes and practices impede the government's struggle to create a modern developed state. Several states, when appearing before the Committee, contrast the "backward" traditions of the local people with their own progressive politics. Benin's delegation, for example, explain that "one of Benin's age-old problems" is the persistence of its traditional customs, the regressive legacy of which it places in direct opposition to the "progressive outlook" of the state.⁵⁹

Similarly, the Benin delegation commented thus:

Tribal leaders, as an institution, had to be treated with caution, since they were inclined to regard themselves as indispensable. The Constitution did, not therefore, contain any specific reference to them. If however, they were to form associations, which then proposed schemes to promote and protect children's rights, the Government could grant them support.

a transition towards Europeanisation) one had to reject all African customs and even in some cases take a European cum Christian name. The symbolism of the renaming is well known. It always signified the 'death' of the old named persona and the birth of a new one. In this case the death of the African and the birth of a would-be European. This was to create a subcategory of British, French and Portuguese black men. After all did the French not teach Africans that their ancestors were Gauls?

⁵⁸ Murunga (n 52 above) 8.

⁵⁹ S Harris-Short 'International Human Rights Law: Imperialist, Inept and Ineffective? Cultural relativism and the UN Convention on the Rights of the Child' (2003) 25 *Human Rights Quarterly* 148-149.

Nevertheless, as they usually practice polygamy and might each have as many as 100 children, it was hard to see how they would find any time to look after the interests of other people's offspring.⁶⁰

The behaviour exhibited in these two quotations is not the least atypical; it is symptomatic of how powerful African elites view the majority of their own people.

2.2.3 African formal education as a tool for perpetuating the dichotomy

African formal education has perpetuated this elite behaviour till date, i.e., nearly half a century after independence. Educational curriculum's in Africa continue to be exclusively focused on Western experiences now elevated to universal status while African experiences are ignored. To be specific, Rome and Greece continue to be presented as 'cradle of Knowledge and Civilisation' in all African universities despite George James' *Stolen legacy*⁶¹ and Martin Bernard's *Black Athenas* and the substantial amount of works that have since proven them right.⁶² The potential of History as a means for instilling pride and consciousness of belonging in younger generations has woefully been untapped throughout the continent. The most significant parts of African history continue to be absent from school curricular while focus is exclusively placed on the parts that consecrated African humiliation and victimisation namely slavery and colonialism, thus leaving unchallenged the inferiority complex developed during colonialism which Muendane proves is still very much alive today.⁶³

The fact is that there has been to date no collective therapy in whatever form to cure Africans of the psychological damage which was inflicted on them by four centuries of slavery and nearly a century of colonialism. The emancipatory and therapeutic paradigm shift in scholarship proposed by eminent African scholars such as Diop, Obenga and Asante has nowhere been heeded.⁶⁴ Hence the African student must explore outside official curricular if he is to be efficiently knowledgeable about Africa. Since predictably, only few can have the intuition, opportunity and stamina to do so,⁶⁵ majority of current African graduates therefore

⁶⁰ Harris- Short (n 59 above)161.

⁶¹ George James as far back as 1961 reminded humanity that Greek philosophy, which continues till date to be the base of modern scholarship is plagiarised Ancient Egyptian philosophy. And as we know the Egyptians were black Africans. For Africans to perpetuate the idea of Greek philosophy as cradle of civilisation is to endorse the theft of their own heritage. See J George *Stolen Legacy: Greek Philosophy is Stolen Egyptian Philosophy* (1954)

⁶² See CA Diop, *The African origin of civilization: myth or reality* (1974) CA Diop *Civilisation or Barbarism: Anthropology without compromise* (1991). Generally see works of African Egyptologists such as Theophile Obenga and Molefi Kete Asante: links available at <http://www.africamaat.com>.

⁶³ NM Muendane *I am an African: embrace your identity, escape victimization* (2006).

⁶⁴ These authors have proposed that Ancient Egypt and Nubia must be placed at the heart of modern scholarship in Africa and be for African scholarship what Greece and Rome is to western scholarship.

⁶⁵ We talk of *intuition* because one must first realise, which many never do, that there is some deficiencies in current curricular before one can journey into the search of more meaning; *opportunity* because this body of African literature continues to be markedly difficult to obtain on the continent; and *stamina* because this enterprise requires some sustained efforts beyond official curricular and is thus kind of double work.

emerge almost in the same mindset as their predecessors during colonialism; thus justifying Prof Kangué Ewane's diatribe: '*école de l'aujourd'hui africain, laboratoire de sangsues pour la mort du peuple africain.*'⁶⁶

It is this reality of formal education on the continent which perpetuates 'the role of African elite in facilitating the entrenchment of a western agenda'⁶⁷ and their consequential disconnect from the masses which recurrently leads to the perversion of African popular struggles.

2.3 Perverting African popular struggles

2.3.1 Understanding the phenomenon

One key problem that constantly blurs the understanding of African realities is the lack of historical continuity in the way African problems are perceived. Indeed it is no hazard that colonialism to perpetuate its alienation project primarily sought to sell the idea that Africans had no history. The fact is that without this historical continuity, there is no collective memory and the experiences of a people become mere distorted episodes no longer intelligible for they lack their unifying thread. Onoma highlights how the tendency to present African popular struggles such as the independence struggle and the pro-democracy struggle as unconnected episodes has often laid to a de-emphasis of their fundamental commonality and hence facilitated their perversion:

The atomisation of these struggles and the consequent de-emphasis of the common aspiration that tie them together have also led to a perversion of these struggles in ways that have often left them with little emancipatory content. The nationalist struggle against colonialism often tends to slide into indigenization and the replacement of foreign despots with indigenous ones with little changes to the fundamental structures and practices of oppression.... Similarly, pan-Africanist efforts often become attempts at creating supra-state entities to compete against the US and Western Europe with little attention to the excessively elitist and authoritarian character of politics within each of the components of this potential union....And as has been pointed out regularly, democratization degenerates into multi-partyism and free, fair and regular elections with little attention to whether these processes in fact alter the inability of majorities in these societies to impact their own histories.... The perverted versions of all these struggles then become compatible with, and often further the disempowerment of populations in these countries....⁶⁸

⁶⁶ Translated thus: 'Schools of present day Africa, laboratories of leeches for the death of the African people.' FK Ewane (54 above) 195.

⁶⁷ Murunga (n 52 above) 1.

⁶⁸ Onoma (n 52 above) 3.

The perversion which Onoma highlights is indeed a historical fact widely proven by many authors.⁶⁹ The fact that colonialism degenerated into neo-colonialism has been the subject of an abundant literature. And as to how the third wave of democratisation is unfolding, Ake alongside many others demonstrated its perverted nature. This recurrent perversion more than anything else, explains the continued marginalisation and disempowerment of African masses. For our purposes here, it is interesting to analyse the forces which have constantly engineered this perversion as well as their motives and role.

2.3.2 Forces at play, motive and role

Clearly, two forces have been instrumental for this recurring perversion of African struggles. The first is the African political elite whose motive has been selfish pursuit of personal enrichment and aggrandisement. The narrow interests of the African elites who topped popular-struggle movements have always been in sharp contradiction with those of the masses that animated those struggles:

Just as it was during the struggle for independence, there is a contradiction between the deepest aspirations of the masses who constitute the rank and file of the democracy movement and the narrow class interests of its leadership.⁷⁰

Several authors have firmly demonstrated that whereas the interests of the masses resided, during the struggle for independence, in the total transformation of the colonial exploitative state into an instrument of socio-economic and political betterment for all, those of the elites resided in simply replacing the erstwhile colonial administrators and inheriting the latter's privileges.⁷¹ As it is now obvious to all, elites totally succeeded in achieving their goal. This eventually led to the pro-democracy mass protests of the 1980s-90s which as Njongola-Ntalaza, alongside many others,⁷² states were 'a social protest against the failure of the neo-colonial state to live up to the people's expectations of independence, including the fulfilment of their basic needs.'⁷³ Once again, it would appear elites manipulated these democratic struggles and reduced them to no more than processes for elite rotation at various positions at the helm of state without fundamentally changing the nature of the state, political system, and elites' behaviour that disempower ordinary citizens.

While the role of African political elites in the perversion of African struggles is frequently highlighted, that of the other force is often downplayed particularly since the third wave of

⁶⁹ Ake (n 23 above)11; Njongola-Ntalaza(n 49 above) 2. Onoma himself cites eight authors to make his point including Mandani, Ngugi, Armah.

⁷⁰ Njongola-Ntalaza (n 49 above) 2.

⁷¹ Ewane (n 54 above) 104-105; Davidson (n 47 above) 200-201; Ihonvbere (n 21 above) 9-10.

⁷² Ake endorses this view in his persistent use of the term 'second independence': n 22above, 2; n 23 above 22. also Ihonvbere (n 21 above) 10-11.

⁷³ n 49 above, 2.

democratisation. The fact is that the African elites while bearing the greatest responsibility for this perversion – for it behoves elites of all nations to protect their own people – have nevertheless not acted alone. In fact these elites have often been mere instruments in the hands of the Global North whose motive has always been to control African minds and resources forever. This reality is sharply painted by Murunga thus:

Although local African political elites are actively involved in creating, circulating and implementing ideas and policies that bolster Western hegemony, the centre of this hegemony is decidedly in the global North. This location ensures that development [and indeed democracy] discourse remain Eurocentric and Americentric even if they are cast in the universalising and covertly neo-colonial language of globalisation and postcolonialism. In other words, the language is mischievous and misleading, it is meant to render palatable an obnoxious development discourse whose covert aim is to further entrench Western hegemony. With such disguise, it has been possible to ignore or sidestep the central grievances of the oppressed poor articulated in their numerous struggles for social justice.⁷⁴

The ability of the Global North to seize African concepts just to empty them of their emancipatory substance and then force them back on African elites is exceptional. The fact that colonial masters only considered granting independence after ensuring that the independence in question would leave intact their economic exploitation of ex-colonies has been well captured under the term neo-colonialism. The killing of Patrice Lumumba and Thomas Sankara, the French unofficial embargo and subversive acts against Sekou Toure's regime and the overthrow of Nkrumah coupled to the massive support to dictatorial regimes such as Mobutu's – which Cold War dynamics alone cannot explain – can only be understood as actions destined to maintain unchallenged the perverted version of independence. Recently declassified CIA documents have now conclusively proven what has always been alleged, namely, that forces within the Global North masterminded these assassinations and instrumentalised a few African elites for their execution.⁷⁵

Although the Global North's act of perversion has continued to operate even with the third wave of democratisation, there has however been less criticism about this fact. One reason for this is that virtually all the pro-democracy forces are sponsored by funds emanating from the Global North. Since the third wave, the Global North has 'democratised' the distribution of funds in Africa and is now able to reach out directly virtually all segments of the African elites. Hence few among these elites can afford to bite the hand that feed them.

Perhaps a more compelling reason than the above has been the genuine belief, largely due to the infatuation with western ideas already analysed, among African elites that the Global North is out for real democratisation of the continent and that only it can push for this. Thus,

⁷⁴

n 52 above, 1.

⁷⁵

See 'Lumumba's truth comes slowly' *NewAfrican* August 2001 12.

the current trend has even been for factions of the elites, particularly those out of power and in NGOs, to invite greater interventionism of the Global North on the continent.

What those who hold this naive belief ignore, or are not interested in knowing, is that the Global North has never promoted democracy *tout court* on the continent; in fact it has been its greatest enemy. But its exceptional ability to be at the same the nemesis and 'benefactor' of the continent has always partially hidden its true nature. Let say it bluntly, what the Global North has promoted and imposed in Africa since the Third Wave, and only in reaction to a popular struggle that threatened to remove altogether its grip over the continent, is a minimalist form of democracy that guarantees its peaceful hegemony on African minds and resources and by occupying the space pre-empts any reflection and action for an alternative. As such, the popular quest for real democracy 'is subverted by the fake, lame, irrelevant democracy which is being offered as a substitute.'⁷⁶

2.4 Hegemony of African liberal democracy cum multipartism

In the preceding parts, we have alluded to the nature of the liberal democracy that is now unchallenged in Africa. For our purpose here, suffice to state with Onsaringo that: '[w]ithin the context of liberal political thought, democracy means free and periodic elections, a multi-party system, a free press and judiciary, the rule of law, other liberal democratic rights and freedoms.'⁷⁷ Even this limited conception of democracy has not been fully pursued in most African countries. As Lumumba-Kasongo highlights, 'the political system that has been adopted in most parts of Africa since the early 1990s is that fragment of liberal democracy known as multi-partyism.'⁷⁸ That is, a form of democracy whose main aim is what has been described as 'elite habituation'⁷⁹ for peaceful rotation at the helm of state while widespread corruption, neo-patrimonialism, systemic unemployment, mass poverty, and outside exploitation of the continent are left untackled.

As Welzel and Inglehart note, 'there is tension between two different conceptions of democracy.'⁸⁰ At the heart of this tension is the issue of people empowerment which substantially hinges on the question of economic empowerment. Welzel and Inglehart argue convincingly that a key element in the 'human empowerment triad' indispensable for effective democracy (as opposed to electoral democracy) to emerge is increase economic resources

⁷⁶ Ake (n 23 above) 27.

⁷⁷ BN Onsaringo 'Factors influencing women's participation in democratization and electoral processes in Kenya: a case study of Gusii women 1992-97' in Lumumba-Kasongo (n 21 above) 82.

⁷⁸ Lumunba-Kasongo 'The problematics of liberal democracy and democratic process: lessons for deconstructing and building African democracies' in Lumumba-Kasongo (n 21 above) 1.

⁷⁹ C Alden 'A separate peace: Mozambique, state reconstruction and the search for sustainable democracy' in O Furley & R May *Ending Africa's wars: progressing to peace* (2006) 163.

⁸⁰ n 20 above.

for ordinary citizens.⁸¹ Yet, democratisation in Africa has gone hand in hand with a constant and persistent decrease of citizens resources thereby entrenching their disempowerment.

Afrobarometer Surveys⁸² which assessed popular perception about democracy, and whose paradigm is markedly liberal democracy, summarises trends in its findings over the period 2000 to 2005 thus:

On the Economy

- Whether in 2000, 2002 or 2005, in none of our three surveys have more than one-third of Africans interviewed rated their economies positively.
- Over time, Afrobarometer survey respondents express gradually falling assessments of their personal living standards.
- On average, poverty is probably increasing, at least with respect to reported shortages of basic human needs like food, water and cash income.
- Nevertheless, more people say they are willing to accept the hardships associated with economic reform in 2005 than in 2000.

On Democracy

- Although popular support remains high for the principle of democracy – and autocratic alternatives are always roundly rejected – we find a gradual but steady decline in demand for democracy.
- On the supply side, popular satisfaction with practice and availability of democracy is declining sharply, and is falling especially fast in Nigeria, Malawi, Zambia and Zimbabwe.
- The Africans we interviewed think they are freer than they used to be under old autocratic regimes. And while the pace of improvement may be declining after the sudden marked gains realised at the onset of democratic rule, sizeable majorities continue to report that their enjoyment of civil liberties has improved in the last few years.
- Counteracting these trends, Africans are getting used to the idea of political competition; increasing majorities in numerous countries prefer multiple parties and the real electoral choice

...

Overall.

- Even though Africans increasingly worry about unemployment and food insecurity, they report rising levels of electoral and inter-electoral participation.

⁸¹ This human empowerment triad is comprised of action resources, self-expression values, and democratic institution: n 20 above, 128- 129. It would appear among that the only element of this triad African liberal democracies have produced is democratic institution.

⁸² Afrobarometer is an organisation that has been assessing popular perception about democracy in some 18 countries throughout the continent. See further <http://www.afrobarometer.org>.

- Even though they are economically anxious, Africans are still politically patient; they are not yet ready to reject democracy because it may fail at socioeconomic delivery.
- Even though Africans consistently consider the economic present to be worse than the economic past, they see better times ahead. Hope persists, perhaps propelled in part by the freedoms and opportunities provided by democracy.⁸³

What these findings reflect is the inherent inability of the African model of liberal democracy to perform economically. The acceptance of ‘hardships associated with economic reform’ and hope due to ‘opportunities provided by democracy’ mentioned in these findings are widely misguided and largely due to the facts that advocates of currently dominant liberal democracy have successfully sold the idea that democracy as practised would eventually give economic benefits. The fact is that there has been in most African countries no economic reform capable of significantly transforming the economy even in the long term. Such reforms are done by mobilising the masses economically but no where have they been so mobilised.

The IMF/World Bank designed reforms which most countries are following have no transformative potentials and the wholesale failure of their previous plans should have at least warranted caution. The ‘constant growth rate’ that are often so much talked about have most often been achieved by more inflow of foreign aid and by the suffocation of local striving businessmen – who in any case are viewed as unimportant in most countries⁸⁴ – by high tax pressure thus destroying the very base of sustainable development.⁸⁵

For sure the liberal democracy has brought more freedom as compared to the dark days of single party dictatorship but it has nevertheless also been marked by a stagnation and even deterioration of the economic conditions of ordinary citizens which is leading to, as the findings of Afrobarometer acknowledge, steady decline in popular support for democracy. However, it is not democracy *tout court* that is being rejected but the liberal model that continue to be unresponsive to popular needs.

In the light of the specific challenges of the continent, the case has clearly been made that what Africa needs is a developmental democracy propelled by the mobilised efforts of its entire people aimed at transforming local resources and not by relying on foreign ‘generosity’:

⁸³ Afrobarometer *Where is Africa going? views from below: a compendium of trends in public opinion in 12 African countries, 1999-2006* Working paper n 6(May 2006) 2.

⁸⁴ The dominant paradigm being the fallacy that only foreign investment can bring development.

⁸⁵ See for a discussion on the tax difficulties of the small scale businesses on the continent RE Ster & PA Barbour ‘Designing a small business tax system that enhances growth: lessons from Africa’ (2005) 8-13 available at <http://www.itdweb.org/smeconference/documents/3%20africa%20fias.pdf>.

Insofar as the democracy movement in Africa gets its impetus from social and economic aspirations of people in Africa yearning for 'a second independence from their leaders,' it will be markedly different from liberal democracy. In all probability, it will emphasize concrete economic and social rights rather than abstract political rights; it will insist on the democratisation of economic opportunities, the social betterment of the people, a strong welfare system.⁸⁶

Further agreeing on the importance of this holistic understanding of democracy, Nyerere stated that:

Our inheritance and our difficult economic conditions must not blind us to the need to build democracy as an integral part of our development struggle. Freedom, democracy, and the economic well-being of the people are inextricably linked.⁸⁷

In the same vein, Onsarigo recently observed that:

Democracy involves the transformation of economic, political and social structures. Therefore, the democratization of society cannot be successful where the political structures and institutions alone are transformed. In fact, the democratization of political structures and institutions alone cannot be meaningful and cannot be borne by the current economic structures.

The democratization of the African societies, therefore, means that the African people must master their economies as well as their political and social structures.⁸⁸

It is precisely this developmental democracy that the Global North has used as its leverage (free market conditionalities, aid, donor funding, etc) to shunt the emergence on the continent. The simple reason being that, this type of democracy has the potential of putting an end to its control of African minds and resources. This has led to the hegemony on the continent of a model of liberal democracy devoid of developmental concerns. The emphasis is simply placed on concepts such as good governance, transparency and accountability in the context of a total absence of any ambitious vision. The truism contained in the following statement seems throughout the continent to be the most uncommon wisdom: 'Our effort is not to fight against poverty but, to develop our country! We put our stakes higher when it's to deal with challenges!'⁸⁹

The reality is that the democratising African state does not ambition development. Ake highlighted a fact which continues to be woefully true to date namely that the various political contenders in Africa have no plan at all for national economic development. Critical reflection on industrialisation and agricultural development, to mention only those two, which are at the

⁸⁶ Ake Democracy and development in Africa (1996) 139 cited in Lumumba-Kasongo (n 78 above) 1.

⁸⁷ JK Nyerere 'Foreword' in YK Museveni *What is Africa's problem?* (1992) 11.

⁸⁸ Onsarigo (n 77 above) 85.

⁸⁹ Statement attributed to Jonathan McCharty.

core of any real wellbeing of the citizens, have been abandoned and replaced by the wholesale adoption of 'cosmetic strategies deployed by the global North and designed to deal "on a daily basis with urgencies"'⁹⁰

The fact is that IMF and World Bank's complete take-over of the economic sovereignty of African societies predestined Africans to nothing other than an existence of perpetual exploited and beggars. And this take-over has been raised beyond democratic contestation as Onoma convincingly demonstrates:

One constant policy you can predict in most African countries, regardless of which party wins elections is that the government will continue with IMF and World Bank inspired neoliberal market reforms. The implication is simple. It is not within the power of such majority to decide on these policy areas. Decisions on the governance of the economy are not within the sphere of decision areas subject to democratic decision making in many African countries.⁹¹

2.5 Conclusion

It must be restated with force that what Africans took to the streets for in the 1980-90s was not liberal democracy cum multi-partyism. It was a protest to recapture the autonomy of our societies so that as equal brothers and sisters, they could all come together, in the traditional communal spirit of brotherhood, to ponder, plan and construct their societies themselves. Central to that vision was therefore not only the issue of freedom but more importantly the issue of economic self-reliance and production; for the former is mere illusion without the later. As Ake states:

The principle of economic self-reliance ...is precisely the principle we need most, not only to resolve the national question, but also to address the bane of Africa generally, and Nigeria in particular, namely our insistence on consuming without producing.⁹²

Yet the forces which have historically perverted African popular struggles have sought and largely succeeded in maintaining Africans in this existence of consuming without producing for this is a sine qua non for their perpetual grip over our societies. And as Ake again states:

To consume without producing one has to be either a beggar, a parasite or a bandit-beggar and parasite when one is too weak to appropriate by force, bandit when strong enough to do so. However harsh this judgment may seem, the sad reality is that we have effectively chosen this shameful existence, although we are forever busily inventing all kinds of disguises to conceal it.... we make laws which confiscate other peoples' property; we wax eloquent about

⁹⁰ Murunga (n 52 above)8.

⁹¹ Onoma (n 52 above) 8.

⁹² n 23 above 17-18.

development co-operation which is a code for our beggar role in the international system;... [etc...].

A society of beggars, parasites and bandits cannot develop, it cannot know peace or stability, and it cannot be democratic. It can only gravitate endlessly, as we are doing, in material poverty and moral regression.⁹³

The fact is that the inability of the African liberal democracy to economically empower the majority of citizens is neither conjunctural nor temporary; it is inherent in its very definition. Hence the life which it offers to Africans is that of perpetual exploited and beggars. And there is not an ounce of dignity in living a beggar's existence. In such conditions, real democracy will forever remain a will-o'-the-wisp.

⁹³ n 23 above, 18.

CHAPTER 3: DEMOCRATIC CONSTITUTION MAKING IN THE CONTEXT OF AFRICAN LIBERAL DEMOCRACY

3.1 Introduction

The process of democratisation in Africa is not only leaving non-elites, especially rural dwellers, disempowered but democratic participation now tends to be a ritual affirmation of their disempowerment.⁹⁴

The enthusiasm which popular participation in constitution making processes in Africa generates is not unwarranted; for these processes often represent the first time in the history of these societies, since independence, that an attempt is made at taking the opinion of the ordinary citizenry in consideration. However, in the light of the marginalisation and disempowerment discussed in the preceding chapter, these processes have not gone far enough in challenging the status quo.

This chapter analyses democratic constitution making in the limiting context of African liberal democracy. In so doing, the chapter focuses on two key issues. Firstly it examines the issue of predetermination. Concern is with the interrogation whether participation can be meaningful in a context where outcomes are substantially predetermined. Secondly the chapter assesses liberal democratic constitution making in terms of its self-defined objectives.

3.2 Predetermined outcomes

There are at least seven African countries that are frequently cited by advocates of democratic constitution-making as worldwide best practices.⁹⁵ Beyond these, a good number of other African countries have tried more or less to have participatory processes. The rest of the countries have had processes which while claiming to be participatory have nevertheless be denounced as not participatory.⁹⁶ But invariably, all three groups have produced constitutions embedded in the liberal democracy model. In reality, this phenomenon is not unique to Africa but represents the manifestation of the worldwide hegemony of liberal democracy which has been characterised by a profound similarity of constitutions throughout the world. Klug captures this reality when he states that:

⁹⁴ Ake (n 22 above) 20.

⁹⁵ Ihonvbere (n 2above) cites the following countries as best practices respectively Uganda, South Africa, Eritrea, Ghana, Ethiopia; whereas Hart (n 2 above) cites and South Africa, Eritrea, Rwanda and Kenya.

⁹⁶ This includes countries such as Nigeria, Zimbabwe and Cameroon.

Although even comparative discussions of constitutions and constitution-making tend to emphasise the historical uniqueness of individual national constitutions and the futility of imposing 'foreign' constitutional formulations, it is acknowledged that the vast majority of the world's constitutions reflect the appropriation of a heterogeneous range of constitutional principles from the 'prevalent international political culture.'⁹⁷

This prevalent international political culture has been characterised since the end of the Cold War, as Klug further asserts, by an 'increasing hegemonisation' and 'by the early 1990s liberal Constitutional principles were hegemonic.'⁹⁸ Tully places this hegemony in the wider context of the redeployment of a global exploitative system that now seeks to secure its domination through 'less overtly oppressive and more "interactive" means' by introducing or condoning the emergence of demobilising 'low intensity constitutional democracy' which perpetuates the disempowerment of the peoples affected.⁹⁹ This point does not need to be belaboured here, the preceding chapter having already outlined in great details the nature of this reality in the African continent. For our present purposes, it is interesting to see how this hegemony has played in democratic constitution making processes in the continent.

3.2.1 Liberal democracy: imposed starting point of constitution-making

Although liberal democracy has systematically been the undebatable starting point of constitution making in the continent, the analysis of how this state of affairs comes to be in specific cases is however rendered difficult by the dearth of previous analysis since the issue has rarely been problematised at that level. Even critics of African liberal democracies, it would appear, have not yet sought to extend their reasoning to the constitutional realm. The South African process is perhaps the only case where one finds a few analysis of this issue reflecting in the literature. Klug has an interesting analysis on how the ANC, in the light of the liberal democracy hegemony as well as tapping from its own liberal tradition, effected its shift from 'a rhetoric of people's power, democratic centralism and socialist models' to the liberal model.¹⁰⁰ Davis equally analyses metamorphosis in the same direction within the South African Communist Party.¹⁰¹ It would appear the contending parties during the South African constitution-making process, had from the very onset of the process to reconsider their aspirations in the light of the liberal hegemonic model:

In South Africa, the emergence of a hegemonic culture of constitutionalism in the international political culture of the late 1980s had a dramatic impact in shaping the boundaries of

⁹⁷ H Klug 'Participating in the design: constitution-making in South Africa' in P Andrews & S Ellmann (n 39 above) 130.

⁹⁸ n 97 above, 131.

⁹⁹ See Somek's review of Tully's work in A Somek 'The Owl of Minerva: constitutional discourse before its conclusion' (2008) 71 (3) *The Modern Law Review* 480.

¹⁰⁰ n 97 above, 132-134.

¹⁰¹ D Davis 'Deconstructing and reconstructing the argument for a Bill of Rights within the context of South African nationalism' in P Andrews & S Ellmann (n 39 above) 201-203.

constitutional possibility and in reshaping the specific constitutional initiatives and objectives of different social groups and institutions. To this extent then, it is uncontroversial to state that South Africa's new constitutional order was shaped by and reflects the post-cold war hegemony of an American-style constitutionalism.¹⁰²

One could hardly imagine a different outcome at that specific period of South African history. Whether out of conviction or compulsion, the elites had to adopt the liberal model for it was an unavoidable concession that had to be made to secure the sustained international pressure, support and sympathy necessary for the dismantling of the apartheid system. The South African elites might have even had a point in adopting the liberal model for South Africa is perhaps the only African country that has the economic and industrial infrastructures that can bear, albeit partially, the liberal model.

The point however here is that the choice of liberal democracy in South Africa was not democratic within the meaning of participatory constitution making. It never even became an issue at the popular level since all elite groups had already adjusted their position in favour of the liberal model. In fact, prior even to the formal negotiations (CODESA I, CODESA II and Multi-party Negotiations) not to talk of the later Constitutional Assembly period when popular views were sought, it appears there was already a 'consensus' on the liberal model. Perhaps an indication of this is that the key player, the ANC, at the opening of CODESA I already defined democracy exclusively in liberal terms.¹⁰³

In Namibia, the liberal framework came through the set of 'Constitutional Principles' handed down by the Western Contact Group on Namibia as a minimal precondition for an internationally acceptable resolution of the Namibian conflict.¹⁰⁴ Uganda is an interesting case to analyse. At the start of its constitution making process in 1989, the National Resistance Movement (NRM) in the government of president Museveni still strongly believed in a non-liberal democracy.¹⁰⁵ This belief was articulated in the NRM's pronouncement in favour of economic self-reliance¹⁰⁶ as well as in Museveni's, frequently expressed views that Africa would do better if temporarily disconnected from the global system.¹⁰⁷ The NRM's belief in locally propelled industrialisation percolated in its Ten-Point Programme thus:

Without an independent, integrated and self-sustaining national economy, Uganda will never stabilise. Much of the present turmoil is as much due to the political mismanagement as it is to

¹⁰² Klug (n 97 above) 131-132.

¹⁰³ See Mandela's speech at the opening of CODESA I.

¹⁰⁴ See Klug (n 97 above) 132.

¹⁰⁵ Here we mean that the NRM openly rejected some of the corollary of African liberal democracy.

¹⁰⁶ See Museveni's reflection in chapters such as 'Self-reliance is the way ahead', 'When is Africa's industrial revolution?' in Museveni (n 87 above) 173 & 208 respectively.

¹⁰⁷ Museveni is often reported to have stated that Africa would need to be left alone for 30 years for it to develop. He is reported to have reiterated these views when addressing the European Parliament in early 1991: see back cover page of Museveni (n 87 above).

a narrow economy that cannot accommodate the aspiration of the many groups within our society.¹⁰⁸

Despite the above, the country nevertheless started its constitution making markedly from the liberal model which has since been reinforced by the country becoming one of the most reliant on foreign aid on the continent.¹⁰⁹ But could it have been otherwise? In fact, the elites of the three countries discussed this far, South Africa, Namibia and Uganda, can hardly be blamed for their imposition of the liberal model as the starting point for constitution making for theirs took place at a time when liberal democracy was still almost unanimously accepted on the continent. The post-1995 constitution making countries can however not have that excuse since by then there has been at least a growing literature that highlighted the nefarious effect of the liberal model.¹¹⁰ And this should have at least called for a contemplation and reflection on alternatives.

However, even post-2000 constitution making processes such as Rwanda's and Kenya's have continued to take the liberal model as the undebatable starting point. Hence one does not even find a reference to this in the literature and documentation relating to those processes. One rare mention one finds is in a paper presented in the context of the Constitution of Kenya Review Commission where the author states that '[t]he Kenya Constitution being a liberal one, the Commission can only make it more liberal but with more social internal checks and balances of power.' This statement pictures the fatalism and unspoken-about elite consensus on liberal democracy that comes down as an imposition on ordinary citizens in constitution making processes.

3.2.2 Marginal popular participation

The question as to which form of democracy a country adopts is very much part of the constitution and as such, within the contest of democratic constitution making, must be a question that is put before the totality of the citizenry to decide. Its imposition defeats the purposes of democratic constitution making. A country cannot claim that its process is 'people-driven' while the very tenet of that constitution namely the form of democracy which it introduces is not being determined by an informed discussion among its citizenry. Horowitz highlights the fact that a constitution is made of two parts which he defines thus:

All constitutions worthy of the name have two sets of features, which we may refer to crudely as the mechanical and the ideological-aspirational. By *mechanical*, I mean that constitutions need to set out, at least in general terms, how government will work, where particular

¹⁰⁸ Museveni (n 87 above) 280.

¹⁰⁹ See Mwenda (n 24 above) 23-34.

¹¹⁰ Just one reference would be E Chole & J Ibrahim (eds) *Democratisation processes in Africa: problems and prospects* (1995); other contemporary references have already been cited in the preceding chapters.

competences reside, how power will be divided or shared, what exercises of power are prohibited or limited, and how abuses of power will be redressed. By *ideological-aspirational*, I mean that proper constitutions embody some statement about the sort of common life the body politic aims to establish. Sometimes, this statement is explicit, sometimes it must be derived from the provisions of the document, but it is usually there. Hence the semi-sacred character of some constitutions. People tend to get invested in constitutions by virtue of their connection to collective aspirations.¹¹¹

This ideological-aspirational feature is indeed the determinant feature of constitutions for by defining the broader societal project, it also informs the normative and institutional content which the constitution would adopt. The centrality of this ideological-aspirational feature is illustrated by the fact that even courts of law interpreting constitutions frequently have to refer to it as the overall guiding principle.

The question as to which form of democracy is chosen in a polity is part and parcel of the ideological-aspirational feature of the constitution. Hence the absence of debate on this issue means that the participation of ordinary people in the process becomes marginal for the views they express at the mechanical feature level would invariably be reduced into the liberal democracy framework to which they never consented.

This is not only a theoretical consideration but an eminently practical one. Ordinary people's submissions in constitution making it has been demonstrated mainly take the form of complaints about concrete problems such as unemployment,¹¹² poverty, cost of living, land disputes, social amenities etc.¹¹³ It can in fact not be otherwise for the majority of the people do not have the level of knowledge to elevate themselves at the high level of abstraction at which 'professional' constitutional debates take place and are of course primarily concerned with what has been described as 'the main business of life' namely how to secure a decent living. And this is particularly true in societies like those on the continent where for the majority, survival issues are not yet taken for granted.

Although they are the main concerns of the majority, these concrete problems have nevertheless, not been sufficiently problematised in any instance of constitution making on the continent. In fact they have usually been treated as, to borrow Murray's expression, 'vague wish lists, more often concerned with poverty and the standard of living than with

¹¹¹ DL Horowitz 'Constitution making: a process filled with constraint' (2008) paper presented at the Shih Ming-Teh Lectures 8 available at <http://politics.ntu.edu.tw/Lecture%201%20Constitutional%20Process%20in%20Divided%20Societies%20032408.pdf> (accessed on 20 October 2008).

¹¹² In Afrobarometer's surveys, Africans rank unemployment as their most important problems: see Afrobarometer's report (n 83 above) 28. In discussions with people in the streets of Maputo, we could confirm that this is indeed the most cited complaint.

¹¹³ For an idea on popular submissions, see in the context of South Africa, C Murray 'Negotiating beyond deadlock: from the Constitutional Assembly to the Court' in Andrews & Ellmann (n 39 above) 106- 112; coupled with C Barnes and E De Klerk ' South Africa's multi-party constitutional negotiation process' (2002) para 31 available at <http://www.c-r.org/our-work/accord/public-participation/southafrica-multiparty-process.php> (accessed on 15 October 2008) .

matters appropriately dealt with in a constitution.¹¹⁴ This does not mean that these issues are not considered. They are indeed considered but are so only within the framework of the liberal model which prescribed solutions to be more political accountability, governance and transparency and the set of political and socio-economic rights.

By ending the panoply of solutions at that level, the constitution making process in fact more disempowers than it empowers. For all the solutions it proposes places the agency for resolving the individual's problem outside the powers of the individual himself. It fails to open up a world in which the citizens become the principal agents in transforming their society. In the light of the reality described in the preceding chapter, it seems to us that empowerment resides in the citizen's involvement in reflection and action in view of transforming his own life and society. Outside of this active participation both in *thinking* and *acting* there is no empowerment. This thus supposes popular agreement on a collective project in which each and every one, or at least the majority, finds fulfilment hence reason to work towards. In the African context, such a project necessarily has to be a developmental vision. And if there is a single most important goal which African constitution making processes must achieve, it is precisely the consensus on this project.

A point which Onsarigo makes is that 'the democratisation of political structures and institutions alone cannot be meaningful and cannot be borne by the current economic structures.'¹¹⁵ The fact, as the NRM's passage cited above emphasized, is that the problem of African countries has been both political and economic. Ake describes this economic aspect of the problem as the 'bane of Africa' namely 'our insistence on consuming without producing.'¹¹⁶ That is, the problem of economic production.

The predetermined liberal model of constitution seriously considers only the political problem; hence its answer is incomplete. Our argument is that if an informed debate were taking place, during constitution making processes on the continent, on the ideological aspirational feature of the constitution, this second problem could have been brought to the fore and commanded new institutional design that could have dealt with the countries' problems in their totality. In fact, even in the absence of this debate, the economic problem do still come to the fore but is then systematically pushed to the backburner because the liberal doctrine labels it as 'matters not appropriate dealt with in a constitution' Living liberal dogmas aside, one may legitimately ask: why not?

As Horowitz notes, it is precisely connection to collective aspiration that tends to get people invest themselves in constitution making. The ill or narrow definition of this collective aspiration may explain the fact that democratic constitution making in the context of African

¹¹⁴ n 113 above, 112.

¹¹⁵ n 77 above, 85.

¹¹⁶ n 92 above, 18.

liberal democracy has hardly achieved its own self-defined objectives as the analysis below suggest.

3.3 Assessing the achievements of African liberal democratic constitution making

Within the context of liberal democracy, constitution making promises at least three things:

1. 'Legitimacy' and 'ownership' of the constitution;
2. Tackling popular ignorance of the constitution;
3. Entrenching participatory democracy.¹¹⁷

On the issue of legitimacy and ownership, it can not be denied that successful constitution making cases on the continent has generated a certain legitimacy of the constitution particularly among the broad spectrum of elite groups. At the popular level, this legitimacy is supposed to not only develop popular 'ownership' of the constitution, but also to establish the majority of citizens in their role of active 'guardians of the constitution'. On the strength of our previous analysis we would be inclined to say that those processes do not achieve these goals does not.¹¹⁸ Furthermore, the continued ignorance of constitutional principles as we see below would seem to suggest the same conclusion; for one can hardly defend and be attached to what one does not understand. In this section of the work, we almost exclusively use Afrobarometer's findings; the reason being the dearth of other studies on popular perception on the continent.

3.3.1 Ignorance of basic constitutional principle

*Constitution? Wetin be that? Me a never see constitution before o. Na wetin e bi? Na book or na food? Abi na di name of one new govnor? My broda, a beg make you talk the one way poor man pikin fit sabi.*¹¹⁹

Ignorance of the organisational structure and functioning of the state continued to be the lot of large majority of Africans. As part of this study, we undertook informal discussions with ordinary people in the streets and markets of Maputo to gather insight about their understanding of the Mozambican constitution. These informal discussions, although not

¹¹⁷ See V Hart 'Owning the constitution: a path to peace?' (2003) Fellow Project Report, UNIP 3, available at http://www.usip.org/fellows/reports/2003/0430_RPThart.html (accessed on 20 October 2008).

¹¹⁸ See pp 5-6 above.

¹¹⁹ Ihonvbere (n above) 1 silently presents these views which every Nigerian reading the work would effortlessly understand are the views of ordinary Nigerians in the streets. These views are written in Pidgin English and translate thus: 'Constitution? What is that? Me I have never seen constitution before oh! Which thing is it? Is it a book or a kind of food? Is it the name of a new Governor? My Brother, I beg, please talk about what a poor person can understand.' All this written in a humble tone demonstrating an accurate feeling of disempowerment which any English translation can hardly capture.

representative of the total Mozambican per se, nevertheless revealed a thorough lack of understanding, and discomfort about talking, of the constitution on the part of our interlocutors despite the fact that the Mozambican constitution-making process is supposed to have been participatory and constitutional legitimacy seem to have now been respectively and achieved. These views are corroborated by Afrobarometer's findings which show that only 8 % of Mozambicans could correctly respond to the question: 'whose responsibility it is to determine whether or not a law is constitutional' and only 21% could equally correctly state what the presidential term limit is.

Afrobarometer's findings also show that this lack of understanding of constitutions is a general phenomenon on the continent:

Particular troubling for the consolidation of a constitutionally based democracy is the fact that a mere 14% understand how their country's constitution is enforced. In eight countries, the proportion that could correctly identify "whose responsibility it is to determine whether or not a law is constitutional" fell in the single digits. And even among the most informed populaces, in Nigeria and South Africa, well under half could identify the courts as the correct answer.¹²⁰

The countries surveyed by Afrobarometer include four of our best practices of constitution making. The figures for those countries are: Ghana 14 %, South Africa 35 %, Uganda 2 % and Kenya 19 %. Similarly on the rather straight forward and often much published question of the presidential term limit, the majority in those countries, except Ghana, still can answer concretely.¹²¹ What these figures reveal is simply a phenomenon that is empirically observable to all and sundry namely that large majorities in Africa including in countries that have had highly participatory constitution-making processes still are not conversant with their constitution.

Illiteracy and language problems carry part of the blame for this ignorance. However, since participatory processes have often designed imaginative ways to counter this problem,¹²² part of the blame must also reside somewhere else. In the light of our previous development, it would seem that part of the problem also resides in the fact that the starting point of these processes has often been placed beyond the understanding of the majority. By not problematising the concrete problems which the citizens raised and from there developing the logical line of explanation that leads to the adopted solutions, the processes lose the understanding of many from the very beginning. The initial phase of education and sensitisation that is often used ostensibly to enable citizens to make informed submissions, it would appear may end up 'silencing' the voicing of these concrete problems by stating that

¹²⁰ Afrobarometer 'Citizens and the state in Africa: new results from Afrobarometer round 3: A compendium of public opinion findings from 18 African countries, 2005-2006' Working Paper n 61 (May 2006) 10.

¹²¹ n 120 above.

¹²² See Hart (n 2 above) 10.

only submissions already couched in the liberal framework are 'matters properly dealt with in a constitution.'

Another issue linked to this ignorance which must be pondered is how the absence or inadequate definition of the collective project as part of the ideological aspirational feature of the constitution may demobilise people from seriously investing themselves in the process. Here we remind ourselves of Horowitz's proposition that it is connection to collective aspiration that prompts people to invest themselves in constitution. If by default of a collective project actively calling upon them, citizens do not clearly see how the process would directly benefit them, then it may be understandable that they feel no urge to *actively and personally*¹²³ get involved. This small extract commenting behaviour in a successful participatory process such as Uganda's would enable us to ponder on this issue:

The constitutional process provided ample evidence of the practical implication of such neo-patrimonial logic. For example, Mandani observed that candidates competing in the Constituent Assembly elections were shocked by 'the utter cynicism of peasants who seemed to be totally uninterested in their ideas, but wholly interested in what they bring along to eat, to drink, to wear, or to have'.... For, as Mandani argues, people in the countryside primarily saw the elections as an opportunity 'of getting to crumbs on the table'.... Whether or not the delegates were in fact 'shocked' by the attitude of the people, they easily rose to the occasion by presenting themselves as good patrons during the election campaign. Bribery of voters with gifts of soap, alcohol and cash was thus a common strategy among candidates.¹²⁴

If Mandani and Halsteen analysis above is anything to go by, then how to understand the utter cynicism they describe otherwise than as an illustration of the peasant's indifference to the constitution. Had the Constitutional Commission engaged them in the reflection for a project they truly believed was profound beneficial for them, would they have shown the same indifference? We would unhesitantly answer by the negative.

3.3.2 Participatory democracy

It is possible by examining levels of active participation of ordinary citizens in a polity years after the democratic constitution making process took place to ascertain whether or not the process actually empowered people to participate more. However, the first question is what is understood by democratic participation. It is broadly accepted that political participation

¹²³ The fact of attending a meeting of the Constitutional Commission in one's village just like all other villagers does not mean that one is actively involved, what matters is the psychological mindset within which one is attending the meeting. If it is just because the elite came to the village and every other person in the village is attending, then it is very likely that the person would be left pretty much the same as before. There is a degree where one moves from mere attending to truly participating. The key element to reaching this degree is the conviction of the individual himself that the process is beneficial for him.

¹²⁴ U Halsteen 'Taking rights talk seriously: reflections on Uganda political discourse' in H Englund & FB Nyamnjoh (eds) *Rights and the politics of recognition in Africa* (2004) 110.

refers to 'those voluntary activities by which members of a political society share in the selection of rulers and directly and indirectly, in the formulation of public policy.'¹²⁵ Participation may thus be broadly divided in two, namely, electoral participation and participation in decision-making. We deal with both seriatim.

Electoral participation

Since the Third wave, virtually all African countries have institutionalised the ritual of periodic elections. This goes true both for the most repressive regimes, the electoral democracies, as well as our best practices. It has been sufficiently highlighted in the literature how neo-patrimonialism, appeal to tribal allegiances and often outright rigging vitiate the values and importance of elections on the continent.¹²⁶ Similarly, an increasingly issueless political debate leaves voters often with no real choice other than inviting neo-patrimonial incentives and responding to tribal appeal. On how ordinary Africans themselves perceive elections we cite this extensive extract from Afrobarometer:

Generally speaking, Africans are relatively unimpressed with the behaviour of their political leaders while on the campaign trail. Fully 87% think that politicians "often" or "always" make campaign promises simply to get elected – a finding that holds relatively strongly across all countries (ranging from 73% in Mozambique, to 96% in Benin and Zambia). Yet 82% think that elected leaders "rarely" or "never" keep their campaign once elected. But these leaders don't only fail at delivering on their campaign promises. A roughly equal share (81%) do not think that politicians even try to meet the considerably lower bar of "doing their best to deliver development after elections.

So why do voters vote for candidates who offer so little to their constituents? Does the oft-cited offer of elections "incentives" drive voter decisions? Certainly Africans themselves seem to perceive this to be true. More than two-thirds (69%) believe that politicians offer "gifts" to voters during election campaigns "often" or "always." In Kenya and Zambia, more than 90% of the respondents believe such behaviour is the norm. Only in Namibia does the slimmest of majorities (51%) think that such gift-giving is relatively uncommon in campaign arena.

However, when we compare these perceptions with respondents' own experiences, the breadth of the gap is quite striking. While two-thirds believe that offering election incentives is commonplace, a mere 17% were actually offered such gifts themselves during the last campaign. A third or more of voters in Benin (34%), Kenya (42%), Madagascar (33%) and Uganda (36%) were offered "something, like food or a gift, in return for your vote." But in

¹²⁵ TM Aidoo 'Political involvement in a democratising neopatrimonial polity: the case of Ghana -1992 -2000' (2006) 22 (2) *Research Review* 13-36.

¹²⁶ See Aidoo (n 125 above) 14-16.

seven countries the numbers who personally experienced such vote-buying efforts were in the single digits.¹²⁷

One of the reasons for the gap is of course human natural tendency against self-incrimination. In the circumstances describe above, one can hardly value elections on the continent as a tool of popular participation. The picture which is presented above holds true in most of the countries including our four best practices computed in these findings. There is no observable trend which differentiates them from the rest.

Participation in decision making

Participation in decision making refers to the direct or indirect involvement of citizens in the making of decisions that affect them. This form of participation takes several forms. Aidoo lists them in six categories namely, gladiatorial activities,¹²⁸ transitional activities,¹²⁹ spectators activities,¹³⁰ issue participation, civil society involvement and apathetic¹³¹. For our purposes here suffice to simply look at Africans' own perception of their influence in decision making. On this, Afrobarometer's findings reveal that:

Levels of interest in politics may be a cause and an effect of each individual's sense of personal efficacy when it comes to interacting politically either with other citizens, or with state institutions. But despite being actively engaged in the discussion of public affairs, many Africans lack confidence in their ability to understand and influence politics. Fully two-thirds (65%) agree with the statement that "Politics and government sometimes seem so complicated that you can't really understand what's going on." Ugandans have the greatest confidence in their ability to comprehend the working of the political system, but even here, only 28% disagree with this statement, along with 27% Namibians. Citizens of Benin, on the other hand, show the least self-confidence: a mere 5 % disagree with this statement, compared to 77% who agree.¹³²

The figures for our four best practices are Ghana 64 % agree with the statement while 19 % disagree; Kenya 67% against 17%; South Africa 66 % against 17 % and Uganda 62 % against 28% (the percentage gap is due to 'don't know' and 'neither agree nor disagree' answers). These Afrobarometer's findings do not paint the whole picture and its question seems to be too much of a leading question. However, a set of other evidence which

¹²⁷ Afrobarometer (n 120 above) 14.

¹²⁸ These include becoming an active member of a political party, candidate for office, soliciting political funds.

¹²⁹ Include contacting a political leader, attending a political meeting, making a monetary contribution to a party.

¹³⁰ Include voting, militantly wearing say a T-shirt with the effigy of a political party, convincing other on political issues.

¹³¹ Being a member of or participating in civil society organizations is part of involvement in civil society. Also one may reasonably say that a conscious decision not to participate, apathetic, is in a sense a form of participation.

¹³² Afrobarometer (n 120 above) 8.

Afrobarometer's findings show such as the popular perception that representatives do not listen to their constituency,¹³³ corroborates the above findings and may enable us to safely conclude that the level of involvement in politics continues to be low. Furthermore the fact that one can not see a different trait for countries that have gone through democratic constitution making, suggests that the impact of these processes have been marginal at the level of participation in decision making.

¹³³ n 120 above, 16.

CHAPTER 4 CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

This work has sought to demonstrate the nature of the marginalisation and disempowerment of ordinary citizens in African polities. It has argued that this marginalisation and disempowerment primarily derived from the dichotomy elite masses which colonialism introduced on the continent and which has been perpetuated by several factors including present day African formal education. The work has highlighted how attempts at breaking through this marginalisation and disempowerment have systematically been derailed by various perversion strategies deployed by the African political elite and forces within the global North.

The pro-democracy movement of the 1990s did not escape this perversion. In fact, to attentive observers, it was clear early in the process that the Third wave would only marginally challenge this colonial and post-colonial marginalisation and disempowerment. As Mafeje stated:

All evidence points to the fact that in the so-called 'wave of democratisation' sweeping through Africa a new class of compradors will gain ascendancy. They will be largely technocrats who will try their best to ingratiate themselves with the World Bank and to give its Structural Adjustment Programmes in Africa a longer lease of life. Unlike their predecessors, they will be less nationalistic, more pro-West and will espouse some naïve and anachronistic ideas about liberal democracy. In the hope of achieving the long-awaited democracy since independence, the people will vote for them as before. But disillusionment will come fast.

...When it comes to content, the new compradors will have no more to offer than their discredited predecessors.¹³⁴

No one disputes the fact that the third wave has ushered in relatively more freedom but it has not challenged the disempowerment of the majority. More significantly it has no solution to offer on the key issue of *production*. As such, it is reproducing a 'free' Africa that proves structurally unable to tap into the tremendous potential of its own people and resources. Unemployment and poverty thus affect large majorities and are systemic rather than temporary. How can it be otherwise when in most of the countries products locally manufactured can be counted in the fingers of one hand? And then, even the so-called factories, as few as they are, are often only concerned with the last and trivial stage of assembling parts wholly manufactured elsewhere. Hence the third wave is consolidating the

¹³⁴ A Mafeje 'Theory of democracy and the African discourse: breaking bread with my fellow-travellers' in Chole & Ibrahim (n 110 above) 25.

colonially-invented Africa of the monoculture¹³⁵ and shows no interest in challenging this reality head on. Even food production is now being eroded in most countries.¹³⁶

Grounded as it has been on the liberal model and its corollary, Africa's third wave democracy's only mantras are foreign aid and foreign investments while even the most diluted notion of self-reliance is viewed as suspicious and naïve. As such, there has been no hesitation in suffocating local business initiatives under high tax pressures while giving foreign multi-nationals all sorts of open and disguised tax holidays. No one has thought plausible that the economic dynamism of Africans demonstrated in the informal sector throughout the continent could be the base for sounder economic renaissance. In fact, proponents of such forms of self-reliance are viewed as naïve and anachronistic day-dreamers in this age of almighty globalisation.

Against this background, comes the idea of democratic constitution making, a new start, a dawn, a process through which the hitherto marginalized masses are supposed to determine for themselves the most important document of their state: the constitution. Some call it the 'soul of a nation' or 'birth certificate of a nation'¹³⁷, others 'a social contract'¹³⁸

No matter the nomenclature, the new-constitutionalism alias democratic constitution making holds that constitution making must be 'process-led'. As some state, it must be 'a people-driven review process whose final product will be a people-owned constitution.'¹³⁹ Others opine that '[a] democratic constitution cannot be written *for* a people but must be, in some active sense, written *by* the people.'¹⁴⁰ To this Justice Odoki who chaired the Ugandan Constitutional Commission adds that:

A constitution is a social contract between the people and their leaders and among themselves on how they wish to live together and be governed. A key element in any contract is agreement between the parties. As the lawyers put it, there must be *consensus ad item*, a meeting of the minds between the parties. For a constitution to last, there must be general agreement by the people on the fundamental values, interests and aspirations upon which the constitution is founded, and the principles, structures and organs upon which the system of governance is based.¹⁴¹

As can be seen from the foregoing, this democratic constitution making is thus full of empowering potential. It seems for the first time to offer to the majority the opportunity to decide for themselves their societal ideal. Yet, this work has highlighted that since it is the

¹³⁵ By the notion of monoculture, we mean the fact that a whole country is made to depend economically on a single crop or mineral resources.

¹³⁶ See FAO's Africa Reports available at <http://www.fao.org/WAICENT/faoinfo/economic/giews/English/af/index.htm>

¹³⁷ See Ebrahim (n38 above).

¹³⁸ See Odoki (n 37above 49).

¹³⁹ Hart citing the Kenyan process: see Hart (n 2 above) 6.

¹⁴⁰ See Horowitz (n 111 above) 17 critique of such views.

¹⁴¹ n above 37, 49.

African political elite and the Global North – the traditional enemies of African majorities' empowerment – who have invariably been the ones in charge of implementing and funding democratic constitution making processes,¹⁴² they have transformed this into a process for simply 'legitimising' a consensus of theirs that is by large far predetermined before any ordinary citizen is afforded the opportunity of voicing his views. In any case, the process is only allowed to take place in the confines of the liberal democracy.

Citizens are not invited in the process in order to become the main actors in the transformation of their societies; they are simply invited to give their 'assent' to a uniquely African model of liberal democracy that hardly needs their real active participation for its daily operationalisation beyond the occasional ritual of voting. They are invited to voice out views which are directly reduced by 'experts' into the predetermined liberal framework.

Hence democratic constitution making as conducted this far has left unchallenged the marginalisation and disempowerment of the majority. We stated that the problem is not of course with the idea of democratic constitution making itself, but with the scope within which it has been confined, that is the liberal framework. Hence our question: how can democratic constitution making usher in the beginning of the end of the marginalisation and disempowerment of the majority of African citizens? We have already opened windows to possible solutions in the preceding chapter. We shall enumerate a few others in the form of recommendations.

4.2 Recommendations

To begin with, it must be stated that democratic constitution making represents a wonderful opportunity for challenging the citizenry's disempowerment. Being, a framework where all in the polity come together to ponder their history, present and future, it may therefore help to build a sincere societal consensus and commitment of all towards realizing that consensus.. We only enumerate three overarching recommendations which of course are pregnant with numerous others.

The first recommendation is that future democratic constitution making processes on the continent must be divorced from the shackles of liberal democracy. Processes must truly start from a clean slate. There must therefore been an informed debate on the form of democracy to be adopted. Hence there should be no such predetermined things as 'matters not properly dealt with in a constitution'. Processes should be all about how to find comprehensive and autochthonously developed solutions to the totality of problems to which the polity has been confronted without ruling out any simply on the ground of ideology. Being

¹⁴² The funding of the Ugandan constitution making is exceptional in this regard.

so grounded, the process would greatly restore the autonomy of African majorities over their own society.

The second recommendation, the primary aim of the process must be to develop a societal consensus on an extremely ambitious developmental vision grounded on self-reliance. It must not just be the negatively framed, 'anti-poverty' plans. The vision must go beyond fighting poverty to reflect on imaginative and locally-relevant forms of small scale industrialisation and agricultural plan. Such vision must create some direct active participation of all in the polity in its realisation. If properly conducted this consensus offers even the prospects of addressing the nation-building current deadlock. For what unites a people, just like a team, is far less the idiosyncrasies of its members, its rules, or the structure of its leadership than the common goal that is pursued by all and beneficial to all.

The last recommendation is that the process itself must be self-reliant. That is no soliciting of foreign funds to sponsor the process. Imaginative ways must be found for citizens themselves to directly provide the resources needed. This means that cost must be reduced to the minimum. Hence no big hotel bills when a community hall can accommodate delegates, usage of collective transportation etc.... In fact it must be seen that everybody is giving voluntarily a bit of himself and his resources to the process. As utopian as this sees it is however not difficult to achieved provided there is a bit of sincerity on all sides. A clue here can be learned from the funding of the Somaliland peace and reconciliations accords in general and the Boorame Conference particular.¹⁴³ Being self-reliant in the way here described, the process is more like to usher in an era of sustained self-reliance.

All these recommendations of course pose the question of which are the forces which can make this happen. We doubt that the current political elite can muster the courage to do what is here proposed. However one can not doubt the fact that there exist in the continent and in its diaspora a good number of persons highly conscious and sympathetic to the issues raised here. While their impact continues to be marginal for now, it is however not fated to always be so. And these groups have a powerful advantage for the position expressed here and which they stand for does not lack popular support any where in the continent and the disillusionment of liberal democracy is adding to the list of their potential supporters. What is lacking as yet is the vocal leadership to articulate these views.

We are not oblivion to the fact that some would see these recommendations as mere utopia if not gross aberration. As Sartre once declared, before being realised an idea has a strange

¹⁴³ The Boorame Conference is the most pivotal of Somaliland peace conferences. The conference lasted 5 months (January-May 1993). The burden financial and otherwise of organising this conference was completely supported by the Boorame community. Participants at the Conference were simply accommodated and fed by the community and participants have pointed this as one of the main reasons of the conference's success. See further M Bryden 'Introduction' in World torn Society (WSP) International *Rebuilding Somaliland: issue and possibilities* (2005) 15. See also S Kaplan 'The remarkable story of Somaliland' (2008) 19 (3) *Journal of democracy* 151-152.

resemblance to utopia.¹⁴⁴ Even the liberal democracy so hegemonic today was initially a mere idea in the mind of the likes of Montesquieu, Locke, and the rest. And their universalisation has less to do with their being intrinsically good than to the Global North's economic and military might. Hence, as Vlahos and Raplan state: 'Do not assume that democratic capitalism is the last word in human evolution.'¹⁴⁵

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(Including footnotes and excluding table of contents and bibliography)

¹⁴⁴ See Santos citing Sartre: BS Santos 'Toward a multicultural conception of Human Rights' in FG Isa & K Feyter (eds) *International protection of human rights: achievements and challenges* (2006) 69.

¹⁴⁵ Cited by I Filatora 'Democracy versus state: the African dilemma' in H Solomon & I Liebenberg (eds) *Consolidation of democracy in Africa: A view from the South* (2000) 39.

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